Supreme Court, U.S.
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No. 01-838

IN THE

Supreme Court of the United States

JOHNNY REYNOLDS, *et al.*,

Petitioners,

-and-

CECIL PARKER, *et al.*,

Petitioners,

v.

G. M. ROBERTS, in his official capacity as Director of the Alabama Department of Transportation, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS WILLIAM ADAMS, *et al.*

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QUESTIONS PRESENTED

1. Whether a district court may enter an injunction without the consent of all parties affected by the injunction or a hearing or other proceeding providing due process on the matter which is the subject of the injunction.

2. Whether a district court may approve isolated portions of a proposed consent decree in piecemeal fashion instead of deciding whether to approve or reject the entire proposed decree.

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STATEMENT OF THE CASE

A. Early History and Consent Decree I.

The original complaint in this lawsuit was filed on May 21, 1985 by six African-Americans. Plaintiffs alleged that the Alabama Department of Transportation ("ALDOT") and the State Personnel Department ("SPD") had discriminated against them in their employment because of their race. The district court later certified three separate plaintiff classes of African-Americans. Pet. App. 17a, 18a.

On November 18, 1993, after a partial trial that lasted for several months, the plaintiffs and defendants tendered a partial settlement to the district court. Pet. App. 4a, 18a. The settlement was embodied in a proposed consent decree that provided for broad systemic classwide relief and left the monetary and non-monetary claims of individual class members for subsequent trial. Pet. App. 4a, 7a. At the time that the proposed consent decree was submitted to the district court, the plaintiffs had not yet finished presenting their evidence at trial. Pet. App. 4a, 5a. Hence, despite the lengthy trial record developed by plaintiffs, there is no finding of liability for racial discrimination in this case.[1]

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1. The trial record on classwide liability in this case consists of an uncompleted presentation of plaintiffs' case. Pet. App. 5a. In later proceedings, the district court found that the entry of Consent Decree I constituted a finding of classwide liability. That order was in effect at the time the district court entered the order appealed from in this case. In a separate appeal, which is now law of the case, the Eleventh Circuit vacated the district court's finding of classwide liability. Pet. App. 7a; *Reynolds v. Roberts*, 202 F.3d 1303 (11th Cir. 2000).

Following public notice of the proposed 1993 consent decree, a group of non-black ALDOT employees ("the Adams intervenors") filed objections to certain provisions of the proposed consent decree and were granted intervention. *Reynolds v. Roberts*, 846 F. Supp. 948, 954 (M.D. Ala. 1994); Pet. App. 4a, 5a. The Adams intervenors objected to race-conscious long-term and annual goal provisions requiring 33.3% black representation in all job classifications; "enhanced goal" provisions that carried forward unmet annual goal obligations indefinitely, specific set-asides of engineering positions for competition among black employees only and other race-conscious provisions of the proposed decree. Pet. App. 4a, 5a; R4-506.

The district court permitted the Adams intervenors to challenge the race-conscious provisions of the proposed decree as intervenors, 846 F. Supp. at 954, and subsequently certified a class of non-black employees to be represented by the named intervenors. Pet. App. 5a. The district court also permitted the Adams intervenors to file objections to the race-neutral provisions of the proposed decree, explaining that "the non-class member employees may only challenge the race-conscious provisions of the proposed decree as intervenors, but they may challenge the race-neutral provisions in their capacity as 'objectors' within the meaning of Section 108 of the Civil Rights Act of 1991." 846 F. Supp. at 954 n.8. Because the interrupted trial in the case had included a "vast amount of evidence of the Transportation Department's past employment practices," the district court did not permit the Adams intervenors to present additional factual evidence, but permitted the Adams intervenors to argue based only on evidence already received "that the factual predicate is not sufficient as a matter of law to warrant the type or extent of race-conscious relief contained in the proposed decree." *Id.*

During the initial hearing on the proposed 1993 decree, the district court urged the parties to sever the proposed decree into race-conscious and race-neutral relief and seek a negotiated resolution of the intervenors' objections. Pet. App. 5a.

The plaintiffs, defendants, and Adams intervenors subsequently engaged in discovery and negotiated revisions to both race-conscious and race-neutral provisions of the proposed consent decree. Pet. App. 5a. With the negotiated revisions, the original proposed consent decree was rewritten and then resubmitted by plaintiffs as three separate proposals: Consent Decree I, II, and III. Pet. App. 5a.

Consent Decree I contains classwide remedial provisions that all parties agreed were race-neutral and was entered on March 16, 1994. R6-553. The renegotiated Consent Decree I was entered on motion of the plaintiffs with the consent of the defendants and Adams Intervenors. Pet. App. 6a.

Consent Decrees II and III contain race-conscious provisions and, save for the single paragraph at issue here, have never been approved by the district court. The Adams intervenors have consistently opposed approval of Consent Decrees II and III. Pet. App. 5a. The defendants subsequently withdrew their approval of Consent Decrees II and III. Pet. App. 5a, 6a, n.4.

Since the entry of Consent Decree I, the Adams intervenors have actively participated in the ongoing proceedings in the district court. This litigation over the past eight years has been extensive, including proceedings before the District Judge and all four Magistrate Judges of the Middle District of Alabama. The Adams intervenors have

been involved in these proceedings in the district court to the extent that their employment interests are implicated and affected by the race-conscious relief consistently and constantly requested by the petitioners. In addition, the intervenors have actively sought to enforce and protect the race-neutral provisions of Consent Decree I to ensure that these remedies work effectively and thereby eliminate any need for race-conscious remedies. The district court has effectively taken plenary jurisdiction over all aspects of ALDOT's employment practices, thereby superseding the State merit system operated by the State Personnel Department.

B. The District Court's *Sua Sponte* Injunction.

On January 23, 1998, almost four years after Consent Decree II was tendered to the district court, the court *sua sponte* entered an Order and Injunction approving a single paragraph of Consent Decree II. Pet. App. 16a, *et seq.* Article XIII, paragraph 4 of Consent Decree II provided that ALDOT's black engineers with an engineering degree must be offered reclassification to the classification of Graduate Civil Engineer.[2]

The district court found that the single paragraph from the previously-proposed Consent Decree II was due to be approved based on the evidence presented by the plaintiffs during the partial 1992 trial proceedings. Pet. App. 19a. The district court, however, conceded that its factual "findings" were "only preliminary" and based on an admittedly incomplete record, as follows:

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2. The provision excepted those black engineers already in the higher classifications of Professional Civil Engineer or Graduate Registered Engineer. Pet. App. 17a.

> The [district] court recognizes and emphasizes that this picture is based solely on the plaintiffs' case. The defendants have yet to present their entire case. The findings are therefore only preliminary, and all the [district] court's comments throughout this order about the evidence should be taken as such.[3]

Pet. App. 12a, n.13. In addition, the district court found that the racial classification met the strict scrutiny standards of Equal Protection caselaw. Pet. App. 36a. For those reasons, the district court approved the single paragraph of the previously-proposed Consent Decree II and enjoined the defendants to comply with the paragraph. Pet. App. 44a.

C. The Eleventh Circuit's Decision.

The Eleventh Circuit reversed the district court's order finding it lacked any basis for entry of the *sua sponte* order and injunction.

The appeals court found that the single paragraph was not a proposed consent decree. First, the consent of the defendants to proposed Consent Decree II had been withdrawn in the four years since it was first proposed in 1994 due to intervening decisions addressing the lawfulness of race-conscious relief. Pet. App. 10a, 11a. Second, the

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3. In fact, the district court had precluded the defendants from presenting evidence on classwide liability issues (based on the district court's now-vacated finding of classwide liability). *See Reynolds II*, 202 F.3d at 1318. As the Eleventh Circuit noted, "the [district] court did not permit the Adams Intervenors to present additional factual evidence in support of their objections [to the provisions of proposed consent decrees II and III]." Pet. App. 5a.

single paragraph was never proposed as a settlement but was lifted by the district court from a broader proposed decree. The Eleventh Circuit recognized that approval of "one isolated paragraph out of a proposed consent decree" is contrary to the principle that a "'settlement must stand or fall as a whole.'" Pet. App. 13a. On that basis, the district court lacked authority to enter the single paragraph as a consent decree.

The appeals court found no other lawful basis for entry of the *sua sponte* injunction. There was never a motion seeking entry of the injunction. Pet. App. 13a. The evidence upon which it was based was from the 1992 trial that was never completed. No party was given notice or opportunity to respond to the evidence tendered by the plaintiffs in 1992. The appeals court found the entry of the injunction "procedurally improper" and reversed and remanded the matter for further proceedings. Pet. App. 15a.

REASONS FOR DENYING THE WRIT

Petitioners' Entire Argument Is Based On The Erroneous Assertion That The District Court's Order Approved A Proposed Settlement.

Petitioners claim that this Court should resolve an alleged split among the circuits whether settlements of race discrimination lawsuits that adversely affect the interests of nonminority employees who are also parties to the case may be approved over their objection. Pet. 8, 9. But, as the Eleventh Circuit made clear, the district court here did not approve a consent decree or a proposed settlement. In fact, the Eleventh Circuit expressly found that "this appeal does not involve a consent decree as such but rather an injunction

issued *sua sponte* by the district court." Pet. App. 9a. Petitioners choose to ignore this dispositive finding. The district court simply lifted and approved one paragraph from a proposed consent decree that had been tendered some four years earlier and entered that paragraph *sua sponte* as an injunction. While the appeals court correctly found that the requisite consent for Consent Decree II in its entirety was no longer present, even if it was, the district court lacked the authority to enter a single paragraph of the proposed decree as an injunction.

As the Eleventh Circuit recognized, the decisions of this Court are clear that a district court may not pick and choose from provisions of a proposed settlement without the consent of all of the parties. Pet. App. 13a. "[I]t is the parties' agreement that serves as the source of the court's authority to enter any judgment at all." *Local No. 93 v. City of Cleveland*, 478 U.S. 501, 522 (1986). "More importantly, it is the agreement of the parties, rather than the force of the law upon which the complaint was originally based, that creates the obligations embodied in a consent decree." *Id.* It is without dispute that *at no time* did the defendants or the intervenors consent to the entry of the challenged paragraph in isolation from the balance of Consent Decree II. Pet. App. 11a.

In *Evans v. Jeff D.*, 475 U.S. 717 (1986), this Court recognized that a district court generally has three options when considering a proposed settlement: (1) it can accept the entire proposed settlement; (2) it can reject the proposal and postpone the trial to see if a different settlement can be achieved; or (3) it can decide to try the case. 475 U.S. at 727. Here, even if Consent Decree II was still on the table as a proposed settlement, the district court did not follow

any of the three options. It chose to enter a single paragraph of the "settlement" as an injunction of the Court without seeking the consent of *any* of the parties. "[T]he power to approve or reject a settlement negotiated by the parties before trial does not authorize the court to require the parties to accept a settlement to which they have not agreed." 475 U.S. at 726.

Here, the district court entered its order without consent, without a motion for injunction, without considering the standards for injunctive relief, and without receiving evidence in opposition to the injunction. Petitioners' arguments about the process for approval of settlements are simply meaningless because there was no settlement to approve. The district court's action was so fundamentally wrong, it strains credulity that petitioners' able counsel can seriously represent that this case presents an appropriate vehicle for reviewing the questions presented in their petition.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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